

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the "Agreement") is entered into among the United States of America, acting through the United States Department of the Interior, Bureau of Land Management (the "United States"); and Mohave Flagstone, LLC ("Mohave") (hereafter the United States and Mohave will be referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. Mohave is a flagstone supplier in Fort Mohave, Arizona.
- B. The United States contends that in September 2007, Mohave without the necessary authorization and permits, excavated and constructed a new access road (measuring approximately 1-mile long, 20 feet wide) traversing through Section 7, Township 25 North, Range 13 West, GSRM, in Mohave County, Arizona, which disturbed and damaged Native American artifacts and archeological resources (the "Covered Conduct").
- C. The United States contends that the Covered Conduct gives rise to certain civil claims against Mohave under the Archeological Resources Protection Act and/or common law doctrines.
- D. This Agreement is not a concession by the United States that its claims are not well-founded.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Mohave agrees to pay to the United States \$28,355.83 (the "Settlement Amount"). Mohave shall pay the Settlement Amount in three installments as follows: Mohave shall pay the first installment of \$10,000 to the United States on or before August 24, 2009; Mohave shall pay the second installment of \$10,000 to the United States on or before September 21, 2009; and Mohave shall pay the third and final installment of \$8,355.83 on or before October 19, 2009. Each of the aforementioned installment payments shall be paid by cashier's check payable to "The United States Department of Justice" and shall be delivered to the U.S. Attorney's Office, Financial Litigation Unit, ATTN: Genie Miskell, 405 W. Congress St., Suite 4900, Tucson, AZ 85701-5041, Tel: (520) 620-7402, Fax: (520) 620-7149. Mohave also agrees to execute a Stipulation for Entry of Consent Judgment, attached hereto as Exhibit A. In the event Mohave fails to satisfy its obligations in this Paragraph in any manner, including payment of the full and complete Settlement Amount by October 19, 2009, the Parties agree that the United States may, without notice, (a) file a complaint against Mohave in United States District Court for the Covered Conduct; (b) file the Stipulation for Entry of Consent Judgment; and (c) seek entry of the Consent Judgment (attached hereto as Exhibit B) for the entire Settlement Amount regardless of any prior payments made by Mohave.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims), below, in consideration of the obligations of Mohave in this Agreement, conditioned upon Mohave's full payment of the Settlement Amount, and subject to Paragraph 10 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement, including those specified in Paragraph 1, above), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Mohave from any civil claims the United States has or may have for the Covered Conduct under the Archeological Resources Protection Act, 16 U.S.C. §§ 470 *aa et al.*, or the common law theory of trespass.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Mohave) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- f. Any liability based upon such obligations as are created by this Agreement.

4. In the event that the United States opts to rescind this Agreement, Mohave agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date.

5. Mohave waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Mohave, including its successors and assigns, fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Mohave has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. Mohave agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities related, or connected in any manner or form, to the

Covered Conduct, but otherwise not released in this Agreement. Upon reasonable notice, Mohave shall encourage, and agrees not to impair, the cooperation of its entities, agents, principals, and employees, and shall use its best efforts to make available, and encourage the cooperation of former agents, principals, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Mohave agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by its counsel or other agent(s) or employees. A breach of this Paragraph is a material breach of the Agreement, and shall constitute grounds for rescission of the Agreement at the sole option of the United States and entitle the United States to bring any civil and/or administrative claim, action, or proceeding against Mohave for the claims that would otherwise be covered by the releases provided in Paragraph 4, above.

8. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

9. Mohave warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Mohave, within the meaning of 11 U.S.C. § 547(c)(1), and (b)

conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Mohave was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Mohave commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Mohave's debts, or seeking to adjudicate Mohave as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Mohave or for all or any substantial part of Mohave's assets, Mohave agrees as follows:

a. Mohave's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Mohave shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Mohave's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Mohave was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Mohave.

b. If Mohave's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Mohave for the claims that would otherwise be covered by the releases provided in Paragraph 4, above. Mohave agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Mohave shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Mohave shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States, except to the extent such defenses were available on the Effective Date; and (iii) the United States has a valid claim against Mohave for damages, and the United States may pursue its claims in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Mohave acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

11. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Mohave represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the District of Arizona.

14. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

15. This Agreement, including Exhibits A and B, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the United States.

16. Mohave and any individual(s) signing this Agreement on behalf of Mohave, including its authorized legal representative, represent and warrant that they are authorized to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

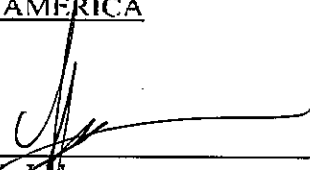
18. This Agreement is binding on Mohave's successors, transferees, heirs, and assigns.

20. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement (the Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: August 30, 2009

BY: 
ROBERT K. LU
Assistant United States Attorney
United States Attorney Office
District of Arizona

MOHAVE FLAGSTONE, LLC

DATED: August 29, 2009

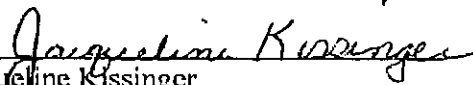
BY: 
Jacqueline Kissinger
Its: Owner

EXHIBIT A

1 DIANE J. HUMETEWA
United States Attorney
District of Arizona

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3 ROBERT K. LU
Assistant U.S. Attorney
Two Renaissance Square
40 North Central Avenue, Suite 1200
4 Phoenix, Arizona 85004-4408
Telephone: (602) 514-7500
5 Facsimile: (602) 514-7760
E-Mail: robert.lu@usdoj.gov

6 Attorneys for Plaintiff United States of America

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF ARIZONA

9 United States of America,

10 Plaintiff,

11 v.

12 Mohave Flagstone, LLC,

13 Defendant.
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NO. _____

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT**

15
16 The United States of America ("United States") and Defendant Mohave Flagstone, LLC
17 ("Defendant") hereby stipulate and agree as follows:

18 1. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
19 § 1345.

20 2. The Court has personal jurisdiction over Defendant.

21 3. Defendant acknowledges the right to be represented by an attorney in this action.

22 4. Defendant consents to entry of judgment in this case in the amount of \$28,355.83,
23 together with post-judgment interest.

24 5. Defendant understands that by consenting to judgment, Defendant waives the right
25 to a trial in this action.

26 6. Defendant acknowledges that it enters into this Stipulation pursuant to a settlement
27 agreement between the United States and Defendant whereby Defendant agreed to pay a
28 settlement amount to the United States by October 19, 2009. Pursuant to the same settlement

1 agreement, Defendant also agreed that in the event it failed to pay the full and complete
2 settlement amount by October 19, 2009, the United States could, without notice, file a complaint
3 against Defendant in the United States District Court, file this Stipulation for Entry of Consent
4 Judgment, and seek entry of a consent judgment against Defendant.

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6 DATED: OCTOBER 15, 2009.

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DIANE J. HUMETEWA
United States Attorney
District of Arizona

Jacqueline Kissinger
Jacqueline Kissinger

ROBERT K. LU
Assistant U.S. Attorney

EXHIBIT B

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
Mohave Flagstone, LLC,
Defendant.

No. _____

CONSENT JUDGMENT

This matter having come before the Court on the Stipulation for Consent Judgment executed and filed by the parties. The Court finding that it has jurisdiction over the subject matter and the parties, and that the allegations of the Complaint and the Stipulation for Consent Judgment are well taken;

IT IS HEREBY ORDERED that judgment is entered in favor of the United States, and against Defendant, Mohave Flagstone, LLC, in the amount of \$28,355.83, together with post-judgment interest.